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8 **Attorney for Plaintiffs**

9 IN THE UNITED STATES DISTRICT COURT  
10 IN AND FOR THE DISTRICT OF ARIZONA

11 OCCUPY TUCSON, an unincorporated )  
12 political organization; SAMUEL AGGER, a )  
13 single man residing in the City of Tucson; )  
14 CRAIG BARBER, a single man residing in )  
15 the City of Tucson; LEESA WORLEY, a )  
16 single woman residing in the City of )  
17 Tucson; KARLAREITH TERRY, a single )  
18 woman residing in the City of Tucson; )  
19 KASEE DWYER, a single woman residing )  
20 in the City of Tucson; GARY BRANSON, a )  
21 married man residing in the City of Tucson; )  
22 and, WILLIAM WARFIELD, a single man )  
23 residing in the City of Tucson, )  
24 )

25 Plaintiffs, )

26 vs. )

17 THE CITY OF TUCSON, a municipal )  
18 corporation of the State of Arizona; )  
19 TUCSON POLICE DEPARTMENT, a legal )  
20 entity of the City of Tucson; ROBERT )  
21 "BOB" WALKUP, in his official capacity as )  
22 Mayor of the City of Tucson; members of )  
23 the Tucson City Council in their respective )  
24 official capacities; RICHARD MIRANDA, )  
25 in his official capacity as Acting Tucson )  
26 City Manager; MICHAEL RANKIN, in is )  
official capacity as Tucson City Attorney; )  
FRED GREY, in his official capacity as )  
director of City of Tucson Parks and )  
Recreation Department; and ROBERTO )  
VILLASEÑOR, in his official capacity as )  
Chief of the Tucson Police Department, )

Defendants )

No. CV11-699TUC-CKJ

**RENEWED MOTION FOR  
TEMPORARY  
RESTRAINING ORDER  
AND PRELIMINARY  
INJUNCTION**

1  
2 Plaintiffs, through counsel undersigned, and pursuant to Rule 65(a) and (b), renew their  
3 request that this Court enter a Temporary Restraining Order, based on their Verified Complaint and  
4 this Motion, and after a hearing, a Preliminary Injunction, restraining and enjoining Defendants, their  
5 officials, officers, agents, employees, contractors, and any other persons acting for them, with them,  
6 through or on their behalf, from enforcing the provisions of Section 12 of the Tucson City Code,  
7 and/or law or ordinance to prohibit the same from picketing, protesting, speaking, leafleting,  
8 assembling, or otherwise peacefully engaging in expressive activity protected by the First  
9 Amendment to the United States Constitution and Article 2§5 of the Arizona Constitution, in  
10 Armory Park, Viente de Agosto Park or on any public land in the City of Tucson,  
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12  
13 In its ruling on the last Motion for Temporary Restraining Order, the Court indicated that one  
14 basis for not granting the request was the fact that the situation at Viente de Agosto was the same as  
15 it was at Armory Park. This has been the case, with people getting tickets for being in the park after  
16 hours, but still being allowed to remain in the park. However, a permit has been requested for the  
17 use of Viente de Agosto Park for December 28<sup>th</sup>, and today a staff person for City Council Member  
18 Regina Romero called a member of Occupy Tucson with information that the Park was going to be  
19 cleared by the police tonight. The Romero staff person indicated that this information came directly  
20 from City Manager Richard Miranda.  
21

22 Counsel avows to this Court that since hearing this news he has attempted to contact City  
23 Attorney Michael Rankin regarding this renewed request. This has included calling Mr. Rankin,  
24 who is out of the office for the afternoon, and leaving a message. Counsel has also sent Mr. Rankin  
25 the attached email with a copy of this pleading. If the Court is not aware, the Occupy Tucson Camp  
26

1 at Viente de Agosto Park has a large number of tents and other structures that have been set up since  
2 the being moved there from Armory Park. Plaintiffs anticipate that any clearing of the Park will  
3 come with very short notice and that much property will be lost or destroyed. Also many homeless  
4 people have been living at the Occupy Tucson site, and if forced to leave on this short notice they  
5 will lose the security and stability that this site has provided to them. Aside from these instances of  
6 immediate and irreparable harm, there is still the fact that Plaintiffs' rights under the First  
7 Amendment to the United States Constitution, and under Article 2 §5 of the Arizona Constitution to  
8 continue with their expressive activity in the Park will be immediately and irreparably harmed if this  
9 Request is not granted.  
10

11 The permit that has been requested for Viente de Agosto Park is for December 28<sup>th</sup>, and if the  
12 Court grants issues a TRO and then decides against Plaintiffs' request there is still time for the City  
13 to make the Park ready for the one day event on the 28<sup>th</sup>. The requested event is an alleged post-  
14 holiday food drive and will not need much room or prep time before. It would also be possible for  
15 the Court to order that Occupy Tucson be allowed to remain but that they make room, and cooperate  
16 with the food drive event.  
17

18 Based on the above, and in the interest of justice, Plaintiffs ask this Court to issue the a  
19 temporary restraining order that will prevent the City of Tucson from forcing them out of Viente de  
20 Agosto Park for a brief period until a hearing can be held, or until Plaintiffs' Counsel has time to file  
21 a Memorandum in Support of their Renewed Request for Temporary Restraining Order. Counsel  
22 can prepare this memorandum very soon and asks the Court to consider issuing this TRO and setting  
23 a hearing this Monday December 26<sup>th</sup>. Plaintiffs will have their Memorandum filed by the end of the  
24 day on the 25<sup>th</sup>, and the Motion to Dismiss/For Summary Judgment that Defendant City of Tucson  
25  
26

1 filed contains all of their arguments as to why a TRO should not be granted. As such the City could  
2 be ready to argue at the hearing for a TRO on the 26<sup>th</sup>. This still allows time for the Park to be  
3 readied for the event there on December 28<sup>th</sup>.  
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5  
6 REPECTFULLY SUBMITTED this 7th day of November 2011.  
7

8 s/Paul Gattone  
9 Paul Gattone  
10 Attorney for Plaintiffs  
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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF ARIZONA

OCCUPY TUCSON, an unincorporated  
political organization; SAMUEL AGGER, a  
single man residing in the City of Tucson;  
CRAIG BARBER, a single man residing in  
the City of Tucson; LEESA WORLEY, a  
single woman residing in the City of  
Tucson; KARLAREITH TERRY, a single  
woman residing in the City of Tucson;  
KASEE DWYER, a single woman residing  
in the City of Tucson; GARY BRANSON, a  
married man residing in the City of Tucson;  
and, WILLIAM WARFIELD, a single man  
residing in the City of Tucson,

Plaintiffs,

vs.

THE CITY OF TUCSON, a municipal  
corporation of the State of Arizona;  
TUCSON POLICE DEPARTMENT, a legal  
entity of the City of Tucson; ROBERT  
“BOB” WALKUP, in his official capacity as  
Mayor of the City of Tucson; members of  
the Tucson City Council in their respective  
official capacities; RICHARD MIRANDA,  
in his official capacity as Acting Tucson  
City Manager; MICHAEL RANKIN, in is  
official capacity as Tucson City Attorney;  
FRED GREY, in his official capacity as  
director of City of Tucson Parks and  
Recreation Department; and ROBERTO  
VILLASEÑOR, in his official capacity as  
Chief of the Tucson Police Department,

Defendants.

No. CV11-699TUCCKJ

**PROPOSED TEMPORARY  
RESTRAINING ORDER**

This matter is before the Court on the Plaintiffs’ Motion for Temporary Restraining Order  
and, after thorough consideration, the Court finds that the motion is well taken and should be

1 granted. The Defendants are hereby enjoined from enforcing Tucson City Code § 21 as it applies to  
2 Plaintiffs' occupation of Viente de Agosto Park in Tucson, Arizona. Defendants are further directed  
3 that they are enjoined from taking any actions to expel Plaintiffs from the Park until a hearing has  
4 been held on the Motion for Preliminary Injunction.  
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6 The matter is to be set for a hearing on this request for preliminary injunction by agreement  
7 of the parties and the Court on the \_\_\_\_\_ day December 2011 at \_\_\_\_\_ am/pm  
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9 DATED:  
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14 Judge of the Federal Court  
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